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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/521,370 | 01/12/2005 | Yoshio Kajiya | 4402.P066GUS | 2268 |
| 23474 7590 03/13/2008 FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1631 | | | | |
| EXAMINER | | | | |
| ECHELMEYER, ALIX ELIZABETH | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1795 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/521,370

Applicant(s)

KAJIYA ET AL.

Examiner

Alix Elizabeth Echelmeyer

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Susy N Tsang-Foster/
Supervisory Patent Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because: the arguments were not found convincing. Applicant argues that the method of Fujino et al. in view of Horowitz et al. is not the same as the method of the instantly claimed invention. Specifically, Applicant argues that, in the instantly claimed invention, the compound of the "other element" is precipitated on the surface of the metal oxide particles, while in Fujino et al. the manganese is not precipitated on the particles (see Remarks, filed February 11, 2008, page 4). Yet, in the Remarks filed August 24, 2007, Applicant states that Fujino et al. teach "collecting the resultant precipitate" (page 3). Applicant now appears to be arguing that Fujino et al. do not teach forming a precipitate, but Applicant argued in August that Fujino et al. do teach a precipitate. Further, it is unclear how a coating on a metal oxide particle formed by precipitation in Fujino et al. is different from that of the instantly claimed invention, which claims "bonding a compound of the other element [in this case, the manganese oxide of Fujino et al.] on the surface of the oxide or carbonate of the metal [the lithium oxide]."

Next, Applicant argues that one of ordinary skill in the art would not be motivated to fire the compound of Fujino et al. as taught by Horowitz et al. (page 4), while on the next page, Applicant states the motivation: to remove impurities in mixed metal oxide. Applicant argues that the final product of Fujino et al. would be altered by the firing process of Horowitz et al. Of course it would, since impurities would be removed. One of ordinary skill in the art would recognize that the removal of impurities would be worth perhaps slightly altering the final product of Fujino et al., especially since it is seen in the art that a fired mixed metal oxide functions as a (more pure) active material (as in Horowitz et al.).

Next, Applicant discusses Kumta et al., but has not argued the merits of the rejection.

Finally, Applicant asserts that the claimed method yields unexpected results, citing examples found in the specification. The examiner is unconvinced of the allegedly superior characteristics. It appears in the cited examples that the "Examples" perform only slightly better than the "Comparative Examples." Each table provides only two data points; there is no way for one of ordinary skill in the art to see an unexpected trend when there are only two data points.